

INITIAL STATEMENT OF REASONS

SECTION 4400—PROCEDURE, CONCESSIONS

Purpose of the regulation amendment

The Department of Parks and Recreation (“DPR”) has statutory authorization to award contracts for concessions occupying any portion of the state park system for more than two years through either a request for proposal or invitation to bid process. The proposed regulation amendment would clarify an administrative protest procedure in connection with such concession awards made through either the request for proposal or the invitation to bid process.

The revision would also clarify the time period in which protests must be filed against a contract award determination made through a request for proposal or invitation to bid process. The change would eliminate confusing situations in which the deadline for filing a protest expires before evaluation of the submissions can be completed and the apparent successful proposer/bidder announced by DPR.

Finally, the revision proposes to update statutory references so that the regulations conform to changes made to the Public Resources Code.

Necessity

The current version of this regulation provides generically for filing a protest against a contract award pursuant to public bid and does not make a distinction for contract awards made pursuant to a request for proposal process. Public Resources Code Section 5080.23, which was added in 1994 after the current regulation went into effect, authorizes DPR to use requests for proposals to award contracts for concessions occupying any portion of the state park system for more than two years. The proposed addition of the administrative protest procedure is necessary because it promotes fairness and clarity in the awarding of concession contracts by making the same protest procedure applicable to both the request for proposal and invitation to bid processes.

The current regulation creates confusion because bidders are required to submit any protest within 10 days after the opening of the bids. However, the amount of time required to request and receive background information, and to evaluate submissions made in response to DPR requests for proposals or invitations to bid is usually more than 10 days. Moreover, DPR’s evaluation, conclusion and the competing proposals/bids are not made public until a notice of intent to award is issued. This notice is rarely, if ever, issued within ten (10) days of the initial opening of the proposals/bids. The proposed amendment is necessary because it alleviates this problem by allowing both proposers and bidders to submit protests within 10 days after a notice of intent to award a contract is issued rather than 10 days after the opening of bids.

The proposed amendment also changes the references to Public Resources Code sections 5019.10 and 5019.23, which were repealed in 1983, to reflect the current code sections.

Other changes in the wording were intended to make the regulation easier to read and have no substantive effect.

Material Relied Upon by the Agency

DPR did not rely on any technical, theoretical or empirical study, report or similar document in proposing the revision of this regulation.

Reasonable Alternatives Considered

No other alternatives were presented to or considered by DPR. DPR did not identify any alternatives that would lessen any adverse impact on small businesses.

Evidence Supporting Initial Determination of No Adverse Impact on Business

The proposed regulation amendments will not have any adverse economic impact on business because the amendments are merely procedural changes that clarify the requisite time for filing a protest in connection with either invitations to bid or requests for proposals.

Efforts to Avoid Unnecessary Duplication or Conflicts with Federal Regulations

DPR identified no duplication or conflicts with federal regulations, as protest procedures involving the State's park concession contracts are not a matter of federal concern.